Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-1977 (3)

FLORENCE ANNE BRIGGS,

Petitioner,

v.

INDIANA SUPREME COURT
DISCIPLINARY COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

BRIEF FOR RESPONDENT INDIANA SUPREME COURT DISCIPLINARY COMMISSION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION

I.

OPINION BELOW

The decision and opinion giving rise to Petitioner's application for Writ of Certiorari were made and entered by the Supreme Court of Indiana on January 13, 1987. Said decision and opinion appear at 502 N.E.2d 890, entitled *In the Matter of Florence Anne Briggs*. The decision and opinion are set forth in Petitioner's Appendix at App. B1-31. The effect of the subject decision and opinion was to suspend Petitioner from the practice of law in the State of Indiana for one (1) year.

II.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

III.

QUESTIONS PRESENTED

The Respondent will respond below in its Argument only to those questions that are relevant in the petition. The questions the Commission do not address were found to be without merit on their faces.

IV.

CONSTITUTIONAL PROVISION AND STATE RULE INVOLVED

The Petitioner has fairly summarized the constitutional provisions and state rules she claims have application to the questions presented except that two sections of Indiana Admission and Discipline Rule 23 were set forth incorrectly in her brief. The correct versions of each section are as follows:

Rule 23, Section 10(d)

> In conducting an investigation of any grievance, or in considering the same, the Executive Secretary or the Commission shall not be limited to an investigation or consideration of only matters set forth in the grievance, but shall be permitted to inquire into the professional conduct of the attorney generally. In the event that the Executive Secretary or the Commission should consider any charges of misconduct against an attorney not contained in the grievance, the Executive Secretary shall notify the attorney of the additional charges under consideration, and the attorney shall have the opportunity to make a written response to the additional charges under consideration within twenty (20) days after the receipt of such notification.

Any additional charges of misconduct against an attorney, after such notice has been given by the Executive Secretary and the attorney has had an opportunity to reply thereto, may be the subject of a count of any complaint filed against the attorney pursuant to Sections 11 and 12 of this rule.

Rule 23, Section 15(a)

The Respondent or Commission shall have thirty (30) days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty (30) days of the finding and recommendation of the hearing officer the Supreme Court shall enter judgment or such other appropriate order in the premises.

V.

STATEMENT OF THE CASE

On July 19, 1983 a Verified Complaint For Disciplinary Action was filed against the Petitioner by Respondent. A Hearing Officer was appointed by the Supreme Court of Indiana and the cause was heard over a six-week period beginning July 12, 1984 and ending on August 30, 1984. Both parties then waived the thirty (30) day reporting requirement for the Hearing Officer's Report. The Hearing Officer filed his report to the Supreme Court of Indiana on January 18, 1985, pursuant to Admission and Discipline Rule 23, Section 14(f). In said report, the Hearing Officer found that Petitioner had committed acts of misconduct and recommended that Petitioner be publicly reprimanded.

A review by the Supreme Court of Indiana of the findings and conclusions contained in the Hearing Officer's Report is provided for in Admission and Discipline Rule 23, Section 15(a). Both Petitioner and the Disciplinary Commission petitioned for a review of certain factual findings of the Hearing Officer on February 25, 1985. In addition, the Disciplinary Commission objected to the leniency of the Hearing Officer's recommended

sanctions. On review, the Supreme Court of Indiana rejected the Hearing Officer's recommendation as to the appropriate sanctions and determined that Petitioner's conduct warranted suspension rather than a public reprimand. Suspension was ordered in the Court's opinion entered on January 13, 1987.

On January 28, 1987, Petitioner filed a "Petition by New Counsel for a Temporary Stay of the Court's Decision Entered January 13, 1987, Suspending Respondents from Practice". This petition was denied by the Supreme Court of Indiana on February 12, 1987. On February 2, 1987, Petitioner filed a "Petition by New Counsel for a Modification of the Court's Decision Entered January 13, 1987, Suspending Respondents from Practice". This petition was denied by the Supreme Court of Indiana on February 25, 1987.

VI.

REASONS FOR DENYING THE WRIT

Petitioner's first major argument is that under the rules of criminal procedure joinder of her cause with her attorney husband's cause at trial prejudiced her defense and violated the due process clause of the Fifth and Fourteenth Amendments of the *Constitution of the United States*. Petitioner's argument has no merit because the rules of Criminal Procedure do not apply to attorney disciplinary proceedings. Disciplinary proceedings are not criminal prosecutions. *In re Ruffalo*, 390 U.S. 544, 551 (1968). *In re Kessler*, 272 Ind. 161, 397 N.E.2d 574, 576 (1979). In addition, it is apparent that the joinder of trials was merely for convenience because both causes centered around a common fact pattern. Petitioner also argues that somehow her husband's alleged improper conduct "rubbed off" on her and ultimately resulted in her being sanctioned for conduct that was not her own. This allegation is purely speculative. Petitioner simply makes a claim, but in no way does she show that joinder of trials with her husband prejudiced her cause in any way. Therefore, it is respectfully submitted that the Supreme Court of Indiana's decision that joinder of trials did not preju-

dice Petitioner's defense was correct and that joinder did not violate the due process requirements of the Fifth and Fourteenth Amendments to the *Constitution of the United States*.

A second major argument which Petitioner advances is that the only reasons she was disciplined is because she is an attorney who is married to another attorney who was disciplined. This argument is untenable. As the Hearing Officer and the Supreme Court of Indiana found, the Petitioner assisted her husband in a concerted effort to intentionally delay the termination of a conservatorship which they acknowledged should be terminated. Petitioner's App. at B-26. The crux of Petitioner's argument is that because the Supreme Court of Indiana did not find in her favor, she was denied due process. An adverse decision below does not in any way indicate that Petitioner's right to due process was denied. Therefore it is respectfully submitted that Petitioner has failed to present a question that requires this Court's review based upon the facts of this case.

Petitioner also argues in her petition that her right to due process was violated due to the length of time it took to reach a final judgment. First, it must be noted that no statute of limitations was violated in disciplining Petitioner. Any incidental delays that did occur can be attributed to either the workload of the Disciplinary Commission or directly to petitioner and her attorney husband. In addition, as the Hearing officer in this matter noted, Petitioner was not prejudiced by the death of what she refers to as a "key" witness before her trial. Petitioner's App. at C-89. Preservation of evidence in this case was quite easy and Petitioner was put on notice early of this action. Petitioner's App. at C-83. Therefore, she had ample opportunity to recall and preserve as much as necessary. Therefore, it is respectfully submitted that Petitioner has failed to demonstrate that her Fifth and Fourteenth Amendment rights to due process under the *Constitution of the United States* have been violated.

Finally, petitioner argues that Indiana's procedure whereby

the Supreme Court of Indiana acts as prosecutor and finder of fact is inconsistent with the due process clause of the *Constitution of the United States*. This issue has been previously decided by this Court. The combining of prosecutorial and adjudicative functions in a single agency without more does not violate due process. *Withrow v. Larkin*, 421 U.S. 35 (1975).

Therefore, it is respectfully submitted that the Petitioner has failed to present a question that requires this Court's review based on the facts of this case.

CONCLUSION

The decision below is correct. For the foregoing reasons, it is respectfully submitted that this Petition For Writ of Certiorari should be denied.

Respectfully submitted,

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